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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 07, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:21-CR-00091-TOR-1

v.

Plea Agreement

ANTOINETTE JAMES HOLMES,

Defendant.

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Michael J. Ellis, Assistant United States Attorney for the Eastern District of Washington, and Antoinne James Holmes ("Defendant"), both individually and by and through Defendant's counsel, Douglas D. Phelps, agree to the following Plea Agreement:

1) Guilty Plea and Maximum Statutory Penalties:

Defendant, Antoinne James Holmes, agrees to plead guilty to Count 1 of the Indictment filed on July 20, 2021, charging Defendant with Conspiracy to Distribute Fentanyl, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), 846. Defendant understands that this charge is a Class C Felony, which carries a maximum penalty of not more than twenty (20) years imprisonment; a fine not to exceed \$1,000,000; a term of supervised release of not less than three (3) years of supervised release, nor more than life; restitution; and a \$100 special penalty assessment.

1 Defendant understands that a violation of a condition of supervised release
2 carries an additional penalty of re-imprisonment for all or part of the term of
3 supervised release without credit for time previously served on post-release
4 supervision.

5 2) Denial of Federal Benefits:

6 Defendant understands that by entering this plea of guilty Defendant is no
7 longer eligible for assistance under any state program funded under part A of Title IV
8 of the Social Security Act (concerning Temporary Assistance for Needy Families) or
9 benefits under the food stamp program or any state program carried out under the
10 Food Stamp Act. 21 U.S.C. § 862a. Further, the Court may deny Defendant's
11 eligibility to any grant, contract, loan, professional license, or commercial license
12 provided by an agency of the United States or by appropriated funds of the United
13 States. 21 U.S.C. § 862.

14 3) The Court is Not a Party to the Agreement:

15 The Court is not a party to this Plea Agreement and may accept or reject this
16 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
17 Court. Defendant understands that the Court is under no obligation to accept any
18 recommendations made by the United States and/or by Defendant; that the Court will
19 obtain an independent report and sentencing recommendation from the U.S. Probation
20 Office; and that the Court may, in its discretion, impose any sentence it deems
21 appropriate up to the statutory maximums stated in this Plea Agreement.

22 Defendant acknowledges that no promises of any type have been made to
23 Defendant with respect to the sentence the Court will impose in this matter. Defendant
24 understands that the Court is required to consider the applicable sentencing guideline
25 range, but may depart upward or downward under the appropriate circumstances.

26 Defendant also understands that should the sentencing judge decide not to
27 accept any of the parties' recommendations, that decision is not a basis for
28 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

1 4) Effect on Immigration Status:

2 Defendant recognizes that pleading guilty may have consequences with respect
3 to Defendant's immigration status if Defendant is not a citizen of the United States.

4 Under federal law, a broad range of crimes are removable offenses, including
5 the offense to which Defendant is pleading guilty. Indeed, because Defendant is
6 pleading guilty to Conspiracy to Distribute Fentanyl, removal is presumptively
7 mandatory.

8 Removal and other immigration consequences are the subject of a separate
9 proceeding, however, and Defendant understands that while deportation and/or
10 removal appears to be a virtual certainty, no one, including Defendant's attorney or
11 the district court, can predict with absolute certainty the effect of Defendant's
12 conviction on Defendant's immigration status.

13 Defendant nevertheless affirms that Defendant wants to plead guilty regardless
14 of any immigration consequences that Defendant's plea may entail, even if automatic
15 removal from the United States is a virtual certainty.

16 5) Waiver of Constitutional Rights:

17 Defendant understands that by entering this plea of guilty Defendant is
18 knowingly and voluntarily waiving certain constitutional rights, including:

- 19 a) The right to a jury trial;
20 b) The right to see, hear and question the witnesses;
21 c) The right to remain silent at trial;
22 d) The right to testify at trial; and
23 e) The right to compel witnesses to testify.

24 While Defendant is waiving certain constitutional rights, Defendant understands
25 Defendant retains the right to be assisted through the sentencing and any direct appeal
26 of the conviction and sentence by an attorney, who will be appointed at no cost if
27 Defendant cannot afford to hire an attorney. Defendant also acknowledges that any
28 pretrial motions currently pending before the Court are waived.

1 6) Elements of the Offense:

2 The United States and Defendant agree that in order to convict Defendant of
3 Conspiracy to Distribute Fentanyl, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C),
4 846, the United States would have to prove beyond a reasonable doubt the following
5 elements:

6 *First*, beginning on a date unknown, but by on or about April 1, 2020, and
7 continuing until on or about April 21, 2021, in the Eastern District of
8 Washington and elsewhere Defendant, Antoinne James Holmes, entered into an
9 agreement with one or more persons to commit the crime of distribution of a
10 mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-
11 phenylethyl)-4-piperdiny]propanamide (a/k/a "Fentanyl"); and

12 *Second*, Defendant became a member of the conspiracy knowing of at least one
13 if its objects and intending to help accomplish it.

14 7) Factual Basis and Statement of Facts:

15 The United States and Defendant, Antoinne James Holmes, stipulate and agree
16 that the following facts are accurate; that the United States could prove these facts
17 beyond a reasonable doubt at trial; and these facts constitute an adequate factual basis
18 for Defendant's guilty plea. This statement of facts does not preclude either party from
19 presenting and arguing, for sentencing purposes, additional facts which are relevant to
20 the guideline computation or sentencing, unless otherwise prohibited in this
21 agreement.

22 Beginning on a date unknown, but by on or about April 1, 2020, Defendant
23 began distributing Fentanyl laced pills, commonly known as "Mexi-Blues," to persons
24 in the Eastern District of Washington, Idaho ~~and elsewhere~~ ^{ASH USE} Defendant utilized
25 applications on his cellular telephone, such as Snapchat and Venmo, to facilitate and
26 accept payment for his distribution of Fentanyl laced pills as well as other controlled
27 substances. Further, Defendant enlisted his girlfriend, co-defendant Reigan Rae Allen,
28

1 to assist in his enterprise, primarily by maintaining a drug ledger documenting
2 Defendant's drug trafficking transactions.

3 On May 14, 2020, Defendant and Allen were found to be in possession of
4 Fentanyl laced pills, as well as a firearm and a drug ledger written by Allen, by a
5 Spokane County Sheriff's Office deputy in Spokane County, Washington. The drug
6 ledger contained lists, separated by day, of various transactions, including the
7 recipient's name, the type of controlled substance purchased, and the amount of
8 money that changed hands. Defendant's cellular telephone was also seized and
9 contained numerous messages documenting Defendant's sale of controlled substances.

10 On August 28, 2020, Defendant and Allen distributed Fentanyl laced pills to
11 two teenagers in Bonner County, Idaho, one of whom, G.D., died later that day of a
12 Fentanyl overdose. Defendant was identified by phone records as having
13 communicated with the teenagers about the controlled substance transaction prior to
14 the sale. Further, Defendant's vehicle was tracked using GPS technology and found to
15 have been at the location of the sale at the time when the surviving teenager told
16 investigators the sale had occurred. The transaction with G.D., and G.D.'s death, were
17 subsequently charged in the District of Idaho in Case No. 2:21-cr-00118-BLW.
18 Defendant admits that the teenager would not have died but for the Fentanyl
19 distributed by Defendant.

20 On November 16, 2020, Defendant possessed Fentanyl laced pills with intent to
21 distribute and did distribute to Allen. Defendant and Allen used Fentanyl laced pills in
22 the presence of Allen's infant, C.A., who shortly thereafter suffered a Fentanyl
23 overdose. C.A. had to be quickly transported to a hospital in Spokane County where
24 C.A. was administered Narcan. Later that day, while driving back to Pend Oreille
25 County from the hospital in Spokane County, Defendant and Allen were found by a
26 City of Newport police officer to be in possession of 200 Fentanyl laced pills, as well
27 as another firearm.

1 When subsequently interviewed by law enforcement on April 21, 2021,
2 Defendant admitted to distributing controlled substances, to include Fentanyl laced
3 pills made to look like Oxycodone, in both Eastern Washington and Northern Idaho.

4 Defendant, therefore, admits that, in the Eastern District of Washington, he
5 entered into an agreement with Allen and other persons to distribute controlled
6 substances, in particular Fentanyl laced pills. Defendant personally distributed
7 Fentanyl laced pills to persons in Eastern Washington and Northern Idaho, to include
8 D.K.

9 8) The United States Agrees:

10 a) Dismissal(s):

11 At the time of sentencing, the United States agrees to move to dismiss Counts 2,
12 3, 4, and 5 of the Indictment.

13 b) Not to File Additional Charges:

14 The United States Attorney's Office for the Eastern District of Washington
15 agrees not to bring any additional charges against Defendant based upon information
16 in its possession at the time of this Plea Agreement and arising out of Defendant's
17 conduct involving illegal activity charged in this Indictment, unless Defendant
18 breaches this Plea Agreement any time before or after sentencing.

19 9) United States Sentencing Guideline Calculations:

20 Defendant understands and acknowledges that the United States Sentencing
21 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will
22 determine Defendant's applicable sentencing guideline range at the time of
23 sentencing. Defendant also understands, however, that pursuant to *United States v.*
24 *Booker*, 543 U.S. 220 (2005), the Sentencing Guideline range is advisory and that the
25 Court is required to consider the factors set forth in 18 U.S.C. § 3553(a) and to impose
26 a reasonable sentence.

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28 //

1 a) Base Offense Level:

2 The United States and Defendant stipulate and agree that the base offense level
3 is thirty-eight (38), as Defendant has been convicted under 21 U.S.C. § 841(b)(1)(C)
4 and death or serious bodily injury resulted from the use of the substance. USSG
5 §2D1.1(a)(2).

6 b) Specific Offense Characteristics:

7 The United States and Defendant make no agreement concerning whether any
8 specific offense characteristics apply. Other than as set forth in this Plea Agreement,
9 the United States and Defendant are free to argue how the applicable sentencing
10 guideline range is to be calculated.

11 c) Acceptance of Responsibility:

12 If Defendant pleads guilty and demonstrates a recognition and an affirmative
13 acceptance of personal responsibility for the criminal conduct; provides complete and
14 accurate information during the sentencing process; does not commit any obstructive
15 conduct; accepts this Plea Agreement; and enters a plea of guilty no later than
16 March 10, 2022, the United States will move for a three (3) level downward
17 adjustment in the offense level for Defendant's timely acceptance of responsibility,
18 pursuant to USSG §3E1.1(a) and (b).

19 Defendant and the United States agree that the United States may at its option
20 and upon written notice to Defendant, not recommend a three (3) level downward
21 reduction for acceptance of responsibility if, prior to the imposition of sentence,
22 Defendant is charged or convicted of any criminal offense whatsoever or if Defendant
23 tests positive for any controlled substance.

24 d) Criminal History:

25 The United States and Defendant understand that Defendant's criminal history
26 computation is tentative and that ultimately Defendant's criminal history category will
27 be determined by the Court after review of the Presentence Investigative Report. The
28 United States and Defendant have made no agreement and make no representations as

1 to the criminal history category, which shall be determined after the Presentence
2 Investigation Report is completed.

3 10) Incarceration:

4 The United States and Defendant are free to recommend any term of
5 incarceration the party deems appropriate. Further, the United States agrees to
6 recommend that any sentence of incarceration imposed by the Court be run
7 concurrently with the sentence imposed by the United States District Court for the
8 District of Idaho in *United States v. Antoine James Holmes*, Case No. 2:21-cr-00118-
9 BLW.

10 11) Criminal Fine:

11 The United States and Defendant are free to make whatever recommendation
12 concerning the imposition of a criminal fine that they believe is appropriate.

13 12) Supervised Release:

14 The United States and Defendant agree to recommend that the Court impose a
15 five (5) year term of supervised release to include the following special conditions, in
16 addition to the standard conditions of supervised release:

17 a) that Defendant participate and complete such drug testing and drug treatment
18 programs as the Probation Officer directs; and

19 b) that Defendant's person, residence, office, vehicle, and belongings are
20 subject to search at the direction of the Probation Officer.

21 13) Restitution:

22 Pursuant to 18 U.S.C. § 3663(a)(3), in exchange for the United States
23 dismissing Counts 2, 3, 4, and 5 and/or agreeing to not bring additional charges,
24 Defendant expressly and voluntarily agrees to pay restitution to: (1) C.A. and (2) D.K.
25 The United States and Defendant also hereby stipulate and agree that the Court shall
26 order full restitution, as appropriate, to any entity, organization, insurance company,
27 individual(s), and/or medical provider who provided medical services, funds related to
28 the treatment, or funeral expenses of the victims.

1 With respect to restitution, the United States and Defendant agree to the
2 following:

3 a. Restitution Amount and Interest

4 The United States and Defendant hereby stipulate and agree that, pursuant to 18
5 U.S.C. §§ 3663(a)(3) and 3664, the Court should order restitution in an amount to be
6 determined at or before sentencing. Defendant agrees that, at a minimum, C.A. and
7 D.K. qualify as victims to whom restitution is owed. The United States and Defendant
8 agree that interest on this restitution amount, if any, should be waived.

9 b. Payments

10 To the extent that the Court orders restitution, the United States and Defendant
11 agree that the Court will set a restitution payment schedule based on his financial
12 circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). Regardless, Defendant agrees to
13 pay not less than 10% of his net monthly income towards his restitution obligation.

14 c. Treasury Offset Program and Collection

15 Defendant understands the Treasury Offset Program (“TOP”) collects
16 delinquent debts owed to federal agencies. If applicable, the TOP may take part or all
17 of Defendant’s federal tax refund, federal retirement benefits, or other federal benefits
18 and apply these monies to Defendant’s restitution obligations. *See* 26 U.S.C. §
19 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

20 Defendant also understands the United States may, notwithstanding the Court-
21 imposed payment schedule, pursue other avenues to ensure the restitution obligation is
22 satisfied, including, but not limited to, garnishment of available funds, wages, or
23 assets. *See* 18 U.S.C. §§ 3572, 3613, 3664(m). Nothing in this acknowledgment shall
24 be construed to limit Defendant’s ability to assert any specifically identified
25 exemptions as provided by law, except as set forth in this Plea Agreement.

26 Until a fine or restitution order is paid in full, Defendant agrees fully to disclose
27 all assets in which he has any interest or over which he exercises control, directly or
28 indirectly, including those held by a spouse, parent, nominee, or third party. Until

1 such time as the fine or restitution order is paid in full, Defendant agrees to provide
2 waivers, consents or releases requested by the U.S. Attorney's Office to access
3 records to verify the financial information.

4 d. Notifications and Waivers

5 Defendant agrees to notify the Court and the United States of any material
6 change in his economic circumstances (e.g., inheritances, monetary gifts, changed
7 employment, or income increases) that might affect his ability to pay restitution. *See*
8 18 U.S.C. § 3664(k). This obligation ceases when the restitution is paid-in-full.

9 Defendant agrees to notify the United States of any address change within 30
10 days of that change. *See* 18 U.S.C. § 3612(b)(1)(F). This obligation ceases when the
11 restitution is paid-in-full.

12 Defendant acknowledges that the Court's decision regarding restitution is final
13 and non-appealable. Neither party may withdraw from the Plea Agreement based on
14 the ultimate amount or restitution ordered.

15 14) Abandonment:

16 Defendant agrees to abandon the following listed assets to the Bureau of
17 Alcohol, Tobacco, Firearms and Explosives (ATF):

18 a. a Glock, model 17 Gen5, 9mm caliber firearm, bearing serial number
19 BGTA150; and

20 b. an American Tactical, model Omni Hybrid, multiple caliber (chambered
21 in .300 caliber), AR15 style pistol, bearing serial number NS253815.

22 Defendant agrees to take all steps as requested by the United States and the
23 ATF to effectuate the abandonment of the above-listed assets to the ATF and hereby
24 agrees to execute any and all forms and pleadings necessary to effectuate such
25 abandonment. Defendant consents to the disposal, including destruction, of the assets.

26 Defendant waives any right he might otherwise have had to receive notice or a
27 hearing with respect to any motion, pleading, order, or any other action that the ATF
28 might take, in its sole discretion, to carry out the abandonment, disposition, and

1 destruction of the assets. Defendant's waiver includes, without limitation, all common
2 law, statutory, and constitutional claims or challenges, on any grounds, arising at any
3 time from, or relating to, the seizure, abandonment, disposition, and destruction of
4 assets, including any such claim for attorney fees and litigation costs.

5 15) Mandatory Special Penalty Assessment:

6 Defendant agrees to pay the \$100 mandatory special penalty assessment to the
7 Clerk of Court for the Eastern District of Washington, at or before sentencing,
8 pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United
9 States before sentencing as proof of this payment.

10 16) Payments While Incarcerated:

11 If Defendant lacks the financial resources to pay the monetary obligations
12 imposed by the Court, Defendant agrees to earn the money to pay toward these
13 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
14 Program.

15 17) Additional Violations of Law Can Void Plea Agreement:

16 Defendant and the United States agree that the United States may at its option
17 and upon written notice to Defendant, withdraw from this Plea Agreement or modify
18 its recommendation for sentence if, prior to the imposition of sentence, Defendant is
19 charged or convicted of any criminal offense whatsoever or if Defendant tests positive
20 for any controlled substance.

21 18) Appellate Waiver:

22 In return for the concessions that the United States has made in this Plea
23 Agreement, Defendant hereby expressly waives his right to appeal his conviction and
24 the sentence the Court imposes, including any restitution order, special penalty
25 assessments, and order of supervised release. Defendant further expressly waives his
26 right to file any post-conviction motion attacking his conviction and sentence,
27 including a motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective
28 assistance of counsel based on information not now known by Defendant and which,

1 in the exercise of due diligence, could not be known by Defendant by the time the
2 Court imposes the sentence.

3 Nothing in this Plea Agreement shall preclude the United States from opposing
4 any post-conviction motion for a reduction of sentence or other attack of the
5 conviction or sentence, including, but not limited to, proceedings pursuant to
6 28 U.S.C. § 2255.

7 If Defendant believes that the United States has not fulfilled its obligations
8 under this Plea Agreement, Defendant will object at the time of sentencing; further
9 objections are waived.

10 19) Waiver of Attorney Fees and Costs:

11 Defendant agrees to waive all rights under the "Hyde Amendment," Section
12 617, P.L. 105- 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation
13 expenses in connection with the investigation and prosecution of all charges in the
14 above-captioned matter and of any related allegations (including without limitation
15 any charges to be dismissed pursuant to this plea agreement and any charges
16 previously dismissed).

17 20) Integration Clause:

18 The United States and Defendant acknowledge that this document constitutes
19 the entire Plea Agreement between the United States and Defendant, and no other
20 promises, agreements, or conditions exist between the United States and Defendant
21 concerning the resolution of the case. This Plea Agreement is binding only upon the
22 United States Attorney's Office for the Eastern District of Washington, and cannot
23 bind other federal, state or local authorities. The United States and Defendant agree

24 //

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26 //

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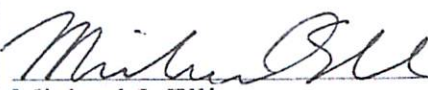
28 //

1 that this agreement cannot be modified except in a writing that is signed by the United
2 States and Defendant.

3 Approvals and Signatures

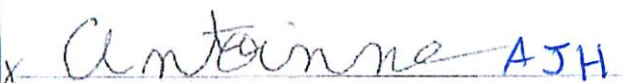
4 Agreed and submitted on behalf of the United States Attorney's Office for
5 the Eastern District of Washington.

6 Vanessa R. Waldref
7 United States Attorney

8  *USE*
9 Michael J. Ellis
10 Assistant United States Attorney

4-7-2022
2-8-2022
Date

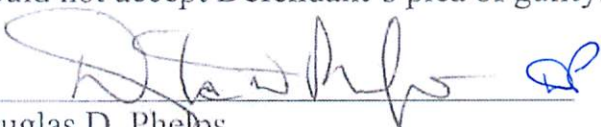
12 I have read this Plea Agreement and have carefully reviewed and discussed
13 every part of the agreement with my attorney. I understand and voluntarily enter into
14 this Plea Agreement. Furthermore, I have consulted with my attorney about my rights,
15 I understand those rights, and I am satisfied with the representation of my attorney in
16 this case. No other promises or inducements have been made to me, other than those
17 contained in this Plea Agreement and no one has threatened or forced me in any way
18 to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

19
20  *AJH*
21 Antoine James Holmes
22 Defendant

4/7/2022
2/6/2022
Date

23 I have read the Plea Agreement and have discussed the contents of the
24 agreement with my client. The Plea Agreement accurately and completely sets forth
25 the entirety of the agreement between the parties. I concur in my client's decision to
26 //

1 plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court
2 should not accept Defendant's plea of guilty.

3 
4 Douglas D. Phelps
Attorney for Defendant

4/7/2022
2/6/2022
Date